

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAN BEDKER, JR.,

Plaintiff,

v.

MARK SELING, *et al*,

Defendants.

Case No. C04-5696RJB

ORDER DENYING PLAINTIFF'S
MOTION FOR IMMEDIATE
STAY

This case has been referred to United States Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. This matter comes before the court on plaintiff's filing of a motion for immediate stay. (Dkt. #34). After reviewing plaintiff's motion and the remaining record, the undersigned hereby finds and orders as follows:

In his motion, plaintiff argues that the issues and grounds for relief raised in his complaint are the same as those currently on appeal to the Ninth Circuit Court of Appeals in Scott v. Seling, C04-5147RJB, and that therefore it would be improper to proceed with this case until that appeal is concluded. Plaintiff's motion, however, is wholly without merit.


In Scott, the only issues plaintiff appealed were that part of the court's order dismissing his action with prejudice and the court's finding that defendants in that action had qualified immunity. See Scott v. Seling, C04-5147RJB (Dkt. #161). The first issue is not applicable to this case. As to the second issue,

1 the undersigned has recommended plaintiff's claims be dismissed under the doctrine of *res judicata*. See
2 Report and Recommendation, dated the same date herewith. Thus, even if plaintiff can show the issue of
3 qualified immunity raised in Scott is identical to that raised in defendants' motion to dismiss (something
4 which plaintiff has not done), the court has not reached that issue here. In addition, plaintiff previously has
5 argued that this case is distinct from Scott. See (Dkt. #22).

6 Accordingly, plaintiff's motion for immediate stay (Dkt. #34) is DENIED.

7 The clerk is directed to send a copy of this Order to plaintiff and to counsel for defendants.

8 DATED this 26th day of May, 2005.

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12 Karen L. Strombom
13 United States Magistrate Judge
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